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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

) No. R-21-0022

)

) **COMMENT OF ARIZONA**

Petition to Amend Rules 4.2, 6.1, 6.5, 6.6,
7.2 and 7.4, Arizona Rules of Criminal
Procedure.

) **ATTORNEYS FOR CRIMINAL**

) **JUSTICE REGARDING**

) **PETITION TO AMEND RULES**

) **RELATED TO BAIL**

)

Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, Arizona Attorneys for Criminal Justice (“AACJ”) hereby submits the following comment to the above-referenced petition.

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 in order to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and fostering public

awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

AACJ generally supports the proposal of the Administrative Office of the Courts because it gives effect to the work of the Fair Justice for All Task Force by reducing the use of monetary bonds to keep indigent defendants incarcerated when such bonds are unnecessary to ensure either the appearance of the accused in court or the safety of the community. By providing defendants not only with immediate bail review hearings but also with an attorney or legal paraprofessional who is trained in the law and can explain to the court at a bail review hearing why, after applying the law to the facts of the defendant's case, release is appropriate. The petition also amends Arizona Rules of Criminal Procedure 4.2, 6.1, 6.5, and 6.6 by authorizing the appointment of legal paraprofessionals to handle bail hearings for misdemeanor defendants—a measure that will undoubtedly help in reducing the cost of the criminal justice system without sacrificing quality of representation.

AACJ is concerned, however, with the addition to Rule 7.2(a)(2) of the sentence: "A bond need not and must not be imposed for a defendant detained on another charge solely to receive credit for time served." Under current law, a person who is detained on another charge does not get time credit against a charge for whom he or she is "released." *State v. Horrisberger*, 133 Ariz. 569, 570 (App. 1982). Presumably, the amendment to Rule 7.2(a)(2) seeks to change that practice by

allowing the defendant to get time credit on every charge during the time the defendant is in custody, regardless of whether a monetary bond or other hold is in place or not.

Instead of that sentence in Rule 7.2(a)(2), AACJ suggests including this language as a new Rule 7.2(a)(4):

(4) Presentence Incarceration Credit. A defendant who is in custody on any offense is entitled to presentence incarceration credit under A.R.S. § 13-712(B) for every offense pending during the defendant's incarceration, without regard to the release conditions that are set as to any particular offense.

This language will more clearly accomplish the Petition's stated goals of reducing the use of monetary bonds in those cases where it is otherwise necessary for a defendant to receive time credit.

DATED: April 29, 2021.

By /s/ David J. Euchner
David J. Euchner

This comment e-filed this date with:

Supreme Court of Arizona

Copy of this Comment served to:

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